

Kristina D. Lawson, J.D., Chair
Panel B

1 XAVIER BECERRA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 JOHN S. GATSCHET
Deputy Attorney General
4 State Bar No. 244388
California Department of Justice
5 1300 I Street, Suite 125
P.O. Box 944255
6 Sacramento, CA 94244-2550
Telephone: (916) 210-7546
7 Facsimile: (916) 327-2247

8 *Attorneys for Complainant*

9
10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 800-2015-014176

14 **HARVEY F. PALITZ, M.D.**
15 1524 McHenry Avenue, Suite 405
Modesto, CA 95350

OAH No. 2018060003

16 Physician's and Surgeon's Certificate No. G 26307,
17 Respondent.

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER.**

18
19 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical
23 Board of California ("Board"). She brought this action solely in her official capacity and is
24 represented in this matter by Xavier Becerra, Attorney General of the State of California, by John
25 S. Gatschet, Deputy Attorney General.

26 2. Respondent Harvey F. Palitz, M.D. ("Respondent") is represented in this proceeding
27 by attorney Robert J. Sullivan, Esq., whose address is:

28 ///

1 Robert J. Sullivan, Of Counsel
2 Nossaman, LLP
3 621 Capitol Mall, Suite 2500
4 Sacramento, CA 95814

5 3. On or about January 15, 1974, the Board issued Physician's and Surgeon's Certificate
6 No. G 26307 to Harvey F. Palitz, M.D. ("Respondent"). That Certificate was in full force and
7 effect at all times relevant to the charges brought in Accusation No. 800-2015-014176, and will
8 expire on September 30, 2018, unless renewed.

9 **JURISDICTION**

10 4. Accusation No. 800-2015-014176 was filed before the Board, and is currently
11 pending against Respondent. The Accusation and all other statutorily required documents were
12 properly served on Respondent on May 3, 2018. Respondent timely filed his Notice of Defense
13 contesting the Accusation.

14 5. A copy of Accusation No. 800-2015-014176 is attached as exhibit A and incorporated
15 herein by reference.

16 **ADVISEMENT AND WAIVERS**

17 6. Respondent has carefully read, fully discussed with counsel, and understands the
18 charges and allegations in Accusation No. 800-2015-014176. Respondent has also carefully read,
19 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
20 Disciplinary Order.

21 7. Respondent is fully aware of his legal rights in this matter, including the right to a
22 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
23 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
24 to the issuance of subpoenas to compel the attendance of witnesses and the production of
25 documents; the right to reconsideration and court review of an adverse decision; and all other
26 rights accorded by the California Administrative Procedure Act and other applicable laws.

27 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
28 every right set forth above.

///

1 CULPABILITY

2 9. Respondent understands and agrees that the charges and allegations in Accusation
3 No. 800-2015-014176, if proven at a hearing, constitute cause for imposing discipline upon his
4 Physician's and Surgeon's Certificate No. G 26307.

5 10. For the purpose of resolving the Accusation without the expense and uncertainty of
6 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
7 basis for the charges in the Accusation and that those charges constitute cause for discipline.
8 Respondent hereby gives up his right to contest that cause for discipline exists based on those
9 charges.

10 11. Respondent agrees that his Physician's and Surgeon's Certificate No. G 26307 is
11 subject to discipline and he agrees to be bound by the Board's terms as set forth in the
12 Disciplinary Order below. Respondent further understands and acknowledges that failure to
13 complete the Board's terms as set forth below may lead to additional charges alleging
14 unprofessional conduct and the imposition of additional discipline.

15 12. Respondent agrees that if an Accusation in the future is filed against him before the
16 Board, all of the charges and allegations contained in Accusation No. 800-2015-014176, shall be
17 deemed true, correct, and fully admitted by respondent for purposes of any such proceeding or
18 any other licensing proceeding involving respondent in the State of California.

19 CONTINGENCY

20 13. This stipulation shall be subject to approval by the Medical Board of California.
21 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
22 Board of California may communicate directly with the Board regarding this stipulation and
23 settlement, without notice to or participation by Respondent or his counsel. By signing the
24 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
25 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
26 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
27 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
28 ///

1 action between the parties, and the Board shall not be disqualified from further action by having
2 considered this matter.

3 14. The parties understand and agree that Portable Document Format (PDF) and facsimile
4 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
5 signatures thereto, shall have the same force and effect as the originals.

6 15. In consideration of the foregoing admissions and stipulations, the parties agree that
7 the Board may, without further notice or formal proceeding, issue and enter the following
8 Disciplinary Order:

9 **DISCIPLINARY ORDER**

10 **A. PUBLIC REPRIMAND**

11 **IT IS HEREBY ORDERED** that Physician's and Surgeon's Certificate No. G 26307
12 issued to Respondent Harvey F. Palitz, M.D. shall be and is hereby publicly reprimanded
13 pursuant to California Business and Professions Code, section 2227, subdivision (a)(4.) This
14 public reprimand, which is issued in connection Respondent's care and treatment of Patient A, as
15 set forth in Accusation No. 800-2015-014176, is as follows:

16 "Between August 24, 2011, and March 29, 2012, you failed to provide proper care and
17 treatment to Patient A in accordance with the standard of practice in the medical community by
18 failing to properly perform ultrasound testing, failing to properly provide prenatal counseling to
19 Patient A, and by failing to perform adequate and accurate medical documentation of Patient A's
20 pregnancy, as more fully described in Accusation No. 800-2015-014176."

21 **B. EDUCATION COURSE** Within 60 calendar days of the effective date of this Decision,
22 Respondent shall submit to the Board or its designee for its prior approval, educational
23 program(s) or course(s) which shall not be less than 40 hours, in addition to the 25 hours required
24 for license renewal. The educational program(s) or course(s) shall be aimed at correcting any
25 areas of deficient practice or knowledge and shall be Category I certified. The educational
26 program(s) or course(s) shall be at Respondent's expense and shall be in addition to the
27 Continuing Medical Education (CME) requirements for renewal of licensure. Following the
28 completion of each course, the Board or its designee may administer an examination to test

Respondent's knowledge of the course. Within 12 months of the effective date of this Decision, Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

Failure to successfully complete and provide proof of attendance to the Board or its designee of the educational program(s) or course(s) within 12 months of the effective date of this Decision, unless the Board or its designee agrees in writing to an extension of time, shall constitute general unprofessional conduct and may serve as the grounds for further disciplinary action.

C. MEDICAL RECORD KEEPING COURSE Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure and the coursework requirements as set forth in Condition B of this stipulated settlement.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later. Failure to provide proof of successful completion to the Board or its designee within twelve (12) months of the effective date of this Decision, unless the Board or its designee agrees in writing to an extension

1 of that time, shall constitute general unprofessional conduct and may serve as the grounds for
2 further disciplinary action.

3 ACCEPTANCE

4 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
5 discussed it with my attorney, Robert J. Sullivan, Esq.. I understand the stipulation and the effect
6 it will have on my Physician's and Surgeon's Certificate No. G 26307. I enter into this Stipulated
7 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
8 bound by the Decision and Order of the Medical Board of California.

9
10 DATED: 07/26/2018


11 HARVEY F. PALITZ, M.D.
Respondent

12 I have read and fully discussed with Respondent Harvey F. Palitz, M.D. the terms and
13 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.

14 I approve its form and content.

15 DATED: 7/31/2018


16 ROBERT J. SULLIVAN, ESQ.
Attorney for Respondent

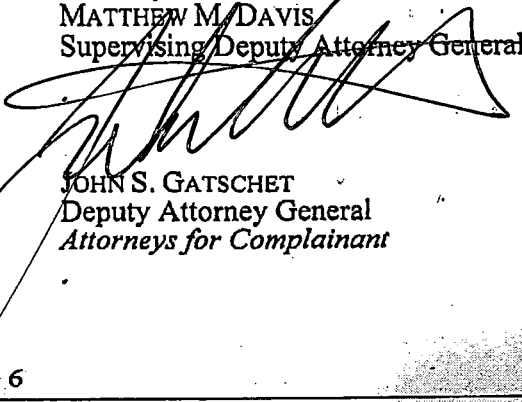
17
18 ENDORSEMENT

19 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
20 submitted for consideration by the Medical Board of California.

21 Dated:

Respectfully submitted,

22 8-1-18
23 XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General


24 JOHN S. GATSCHET
25 Deputy Attorney General
26 Attorneys for Complainant

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28 33476326.docx

Exhibit A

Accusation No. 800-2015-014176

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General
JOHN S. GATSCHET
Deputy Attorney General
State Bar No. 244388
California Department of Justice
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 210-7546
Facsimile: (916) 327-2247

Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 800-2015-014176

Harvey F. Palitz, M.D.
1524 McHenry Avenue, Suite 405
Modesto, CA 95350

A C C U S A T I O N

Physician's and Surgeon's Certificate No. G 26307,
Respondent.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer ("Complainant") brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs ("Board").

2. On or about January 15, 1974, the Medical Board issued Physician's and Surgeon's Certificate Number G 26307 to Harvey F. Palitz, M.D. ("Respondent"). That Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2018, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

4. Section 2227 of the Code provides, in pertinent part, that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code states, in pertinent part:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"...

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"... "

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6. Section 2266 of the Code states, in pertinent part:

“The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.”

FIRST CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

7. Respondent's license is subject to disciplinary action under section 2234, subdivision (c), in that he committed negligent acts during his care and treatment of patient A. The circumstances are as follows:

8. On or about August 24, 2011, patient A¹, a then 32 year-old pregnant female presented to Respondent's office and was seen by a nurse practitioner. A vaginal ultrasound was performed. Patient A reported that her last menstrual period had occurred on June 25, 2011, with an expected due date for delivery of April 2, 2012 and an estimated gestation of 8 weeks and 3 days. However, the vaginal ultrasound (a limited ultrasound²) results suggested a later due date of April 12, 2012, with a gestational of 6 weeks and 4 days.

9. On September 19, 2011, Respondent next saw patient A and she was determined to be 11 weeks into her gestational period as confirmed by a limited ultrasound. It was Respondent's practice to conduct a limited ultrasound, at each visit, in order to measure the growth of the baby and he did so at least five times from approximately October 17, 2011 through March 16, 2012. On or about December 16, 2011, Respondent performed a level 1 ("standard") ultrasound scan of Patient A., who was 23 weeks into her gestation. Respondent did not order a level 2 (comprehensive/anatomy) ultrasound scan on patient A at the December 16, 2011, visit. Respondent kept his handwritten progress notes on a pre-printed sheet of paper entitled "Pre-Natal Record." Respondent did not document the limited ultrasounds he was performing in any

¹ Patient name will be turned over in discovery.

² A level 1 ultrasound typically refers to a “standard” examination and is used to evaluate fetal presentation, amniotic fluid volume, cardiac activity, placenta position, fetal biometry and fetal number, and a brief anatomic survey. A “limited” ultrasound examination is used to answer a specific question, for example fetal weight, and does not replace a standard examination. A level 2 ultrasound typically refers to a “specialized” ultrasound examination and will look for specific anomalies that have been raised by a standard ultrasound examination or other testing.

1 detail, did not print out the ultrasound images from the limited ultrasounds he performed, and did
2 not document discussing the limitations of ultrasounds with patient A.

3 10. On or about March 16, 2012, at patient A's 36-week visit, Respondent noted that she
4 had low amniotic fluid and referred the patient to Memorial Medical Center for a more detailed
5 level 2 ultrasound with Dr. S. As a result of the level 2 ultrasound, Dr. S. detected a small baby
6 measuring 32-week size, a cleft palate, a prominent heart and a two vessel cord instead of three
7 vessels. Patient A was then referred to a perinatologist, Dr. O.-G., who discovered an endocardiac
8 cushion defect, a cleft lip, a baby at 32 weeks and 3 days (based on a size of 4 lbs. and 6 ozs.) and
9 verified Dr. S's other findings. On or about March 19, 2012, a cardiologist ordered a specialized
10 fetal ultrasound of the heart indicating the fetus had a normal heart.

11 11. On or about March 29, 2012, patient A, who was now 37.5 weeks into her pregnancy
12 was seen at Stanford Clinic for further consultation and another ultrasound. The fetus was
13 confirmed to have Intrauterine Growth Restriction, (IUGR), as well as oligohydramnios-low
14 amniotic fluids. Stanford physicians recommended induction of Patient A that same day and a
15 baby was born with a birth weight of 3 lbs. 12 ozs. and was 16 inches in length.

16 12. After the baby's birth several other fetal anomalies not previously suspected were
17 diagnosed for patient A's baby, including the following: right radius arm bone and thumb were
18 absent, bilateral club foot, sacral agenesis-absence of a tail bone, absent 5th lumbar spine, mal-
19 rotated left kidney, common orifice of the vagina and urethra, two small ventral septal defect (or
20 holes) of the heart, and bicuspid (rather than tricuspid) aortic valve. The infant weighed less than
21 five percent for her gestational age.

22 13. None of Respondent's ultrasounds, nor the more detailed ultrasounds from Dr. S or
23 Dr. O.-G. revealed the congenital absence of the sacrum (tail bone) or the presence of limb
24 deformities. Patient A's infant will require multiple surgical interventions for correction of
25 numerous and extensive congenital abnormalities. At two years of age, the infant, demonstrated
26 normal cognitive development but could only "army crawl" due to her limb abnormalities and
27 was only 15 pounds.

28 ///

1 14. Respondent's care and treatment of patient A was repeatedly negligent in the
2 following respects:

3 a. Respondent failed to document the level 1 ultrasound test he performed on
4 patient A on or about December 16, 2011, and there is no indication that Respondent stored the
5 ultrasound image for that testing;

6 b. Respondent failed to counsel and/or document counseling patient A as to the
7 limitations of the limited and standard ultrasounds Respondent performed nor did Respondent
8 describe and/or document describing an option for a more detailed ultrasound study with patient
9 A;

10 c. Respondent failed to order and/or conduct a complete level 1 standard
11 ultrasound scan in the 18 to 22-week period for patient A, to allow for fetal decision making prior
12 to 23 weeks;

13 d. Respondent failed to offer, counsel and/or document offering counsel, including
14 a discussion with patient A, regarding her options for antenatal screening for birth defects
15 including Quad Marker Screening, Serum Integrated Screening and, Sequential Integrated
16 Screening, and/or to have patient A sign a State of California consent form in order to document
17 that counsel had been provided; and,

18 e. Respondent's inaccurate claim during the subject interview that non invasive
19 prenatal testing ("NIPT") would have picked up patient A's fetus abnormalities and his current
20 recommendation that all patients, including both high and low risk pregnancies, undergo NIPT as
21 part of routine prenatal laboratory assessment.³

22 15. Combining the simple departures in paragraphs 13a, 13b, 13c, 13d, and 13e, above,
23 constitutes repeated negligent acts in violation of section 2234, subdivision (c), of the Code.

24 ///

25 ///

26 ///

27 _____
28 ³ It is the Board's understanding that NIPT became commercially available in 2011.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Inadequate or Incomplete Records)**

3 16. Respondent's license is subject to disciplinary action under section 2266 of the Code
4 in that he failed to maintain adequate and complete medical records for patient A. The
5 circumstances are as follows:

6 17. Complainant re-alleges paragraphs 7 through 15, and those paragraphs are
7 incorporated by reference as if fully set forth therein.

8 18. Respondent produced inadequate and incomplete medical records for patient A when
9 he failed to document detailed records and/or reports of the many ultrasound tests he conducted
10 on patient A and where he failed to document his counseling and discussion with patient A
11 regarding her options for antenatal screening for birth defects including Quad Marker Screening,
12 Serum Integrated Screening and Sequential Integrated Screening,

13 **PRAYER**

14 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
15 and that following the hearing, the Medical Board of California issue a decision:

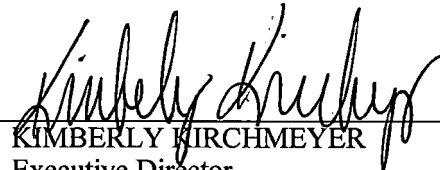
16 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 26307,
17 issued to Harvey F. Palitz, M.D.;

18 2. Revoking, suspending or denying approval of Harvey F. Palitz, M.D.'s authority to
19 supervise physician assistants and advanced practice nurses;

20 3. Ordering Harvey F. Palitz, M.D., if placed on probation, to pay the Board the costs of
21 probation monitoring; and

22 4. Taking such other and further action as deemed necessary and proper.

23
24 DATED: May 3, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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